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9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 800-2020-063898

13 **James Benjamin Martel, M.D.**
14 **P.O. Box 503**
Fair Oaks, CA 95628-0503

A C C U S A T I O N

15 **Physician's and Surgeon's Certificate**
16 **No. G 60544,**

17 Respondent.

18 **PARTIES**

19 1. Reji Varghese (Complainant) brings this Accusation solely in his official capacity as
20 the Deputy Director of the Medical Board of California, Department of Consumer Affairs
21 (Board).

22 2. On or about July 6, 1987, the Medical Board issued Physician's and Surgeon's
23 Certificate Number G 60544 to James Benjamin Martel, M.D. (Respondent). The Physician's and
24 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
25 herein and will expire on October 31, 2024, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code states:

(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

(1) Have his or her license revoked upon order of the board.

(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

STATUTORY PROVISIONS

5. Section 2234 of the Code states:

The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

1 (1) An initial negligent diagnosis followed by an act or omission medically
2 appropriate for that negligent diagnosis of the patient shall constitute a single
3 negligent act.

4 (2) When the standard of care requires a change in the diagnosis, act, or
5 omission that constitutes the negligent act described in paragraph (1), including, but
6 not limited to, a reevaluation of the diagnosis or a change in treatment, and the
7 licensee's conduct departs from the applicable standard of care, each departure
8 constitutes a separate and distinct breach of the standard of care.

9 (d) Incompetence.

10 (e) The commission of any act involving dishonesty or corruption that is
11 substantially related to the qualifications, functions, or duties of a physician and
12 surgeon.

13 (f) Any action or conduct that would have warranted the denial of a certificate.

14 (g) The failure by a certificate holder, in the absence of good cause, to attend
15 and participate in an interview by the board. This subdivision shall only apply to a
16 certificate holder who is the subject of an investigation by the board.

17 6. Section 2236 of the Code states:

18 (a) The conviction of any offense substantially related to the qualifications,
19 functions, or duties of a physician and surgeon constitutes unprofessional conduct
20 within the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record
21 of conviction shall be conclusive evidence only of the fact that the conviction
22 occurred.

23 (b) The district attorney, city attorney, or other prosecuting agency shall notify
24 the Medical Board of the pendency of an action against a licensee charging a felony
25 or misdemeanor immediately upon obtaining information that the defendant is a
26 licensee. The notice shall identify the licensee and describe the crimes charged and
27 the facts alleged. The prosecuting agency shall also notify the clerk of the court in
28 which the action is pending that the defendant is a licensee, and the clerk shall record
prominently in the file that the defendant holds a license as a physician and surgeon.

(c) The clerk of the court in which a licensee is convicted of a crime shall,
within 48 hours after the conviction, transmit a certified copy of the record of
conviction to the board. The division may inquire into the circumstances surrounding
the commission of a crime in order to fix the degree of discipline or to determine if
the conviction is of an offense substantially related to the qualifications, functions, or
duties of a physician and surgeon.

(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is
deemed to be a conviction within the meaning of this section and Section 2236.1.
The record of conviction shall be conclusive evidence of the fact that the conviction
occurred.

7. Section 2238 of the Code states:

A violation of any federal statute or federal regulation or any of the statutes or
regulations of this state regulating dangerous drugs or controlled substances
constitutes unprofessional conduct.

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2 8. Section 2239 of the Code states:

3 (a) The use or prescribing for or administering to himself or herself, of any
4 controlled substance; or the use of any of the dangerous drugs specified in Section
5 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous
6 or injurious to the licensee, or to any other person or to the public, or to the extent that
7 such use impairs the ability of the licensee to practice medicine safely or more than
8 one misdemeanor or any felony involving the use, consumption, or
9 self-administration of any of the substances referred to in this section, or any
10 combination thereof, constitutes unprofessional conduct. The record of the
11 conviction is conclusive evidence of such unprofessional conduct.

12 (b) A plea or verdict of guilty or a conviction following a plea of nolo
13 contendere is deemed to be a conviction within the meaning of this section. The
14 Medical Board may order discipline of the licensee in accordance with Section 2227
15 or the Medical Board may order the denial of the license when the time for appeal has
16 elapsed or the judgment of conviction has been affirmed on appeal or when an order
17 granting probation is made suspending imposition of sentence, irrespective of a
18 subsequent order under the provisions of Section 1203.4 of the Penal Code allowing
19 such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or
20 setting aside the verdict of guilty, or dismissing the accusation, complaint,
21 information, or indictment.

22 9. Section 11170 of the Health & Safety Code states:

23 No person shall prescribe, administer, or furnish a controlled substance for
24 himself.

25 REGULATORY PROVISIONS

26 10. California Code of Regulations, title 16, section 1360, states:

27 (a) For the purposes of denial, suspension or revocation of a license pursuant to
28 Section 141 or Division 1.5 (commencing with Section 475) of the code, a crime,
professional misconduct, or act shall be considered to be substantially related to the
qualifications, functions or duties of a person holding a license if to a substantial degree it
evidences present or potential unfitness of a person holding a license to perform the
functions authorized by the license in a manner consistent with the public health, safety or
welfare. Such crimes, professional misconduct, or acts shall include but not be limited to
the following: Violating or attempting to violate, directly or indirectly, or assisting in or
abetting the violation of, or conspiring to violate any provision of state or federal law
governing the applicant's or licensee's professional practice.

(b) In making the substantial relationship determination required under subdivision
(a) for a crime, the board shall consider the following criteria:

- (1) The nature and gravity of the crime;
- (2) The number of years elapsed since the date of the crime; and
- (3) The nature and duties of the profession

1 **COST RECOVERY**

2 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licensee found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case, with failure of the licensee to comply subjecting the license to not being
6 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
7 included in a stipulated settlement.

8 **FACTUAL ALLEGATIONS**

9 12. On or about October 7, 2019 at approximately 12:45 PM, a California Highway
10 Patrol (CHP) Officer arrived at the scene of a two-vehicle traffic collision. Respondent was
11 slumped over the center console attempting to dial numbers into a cell phone. The CHP Officer
12 asked Respondent post-collision interview questions about lane placement and speed, but
13 Respondent could not recall anything about the collision. Respondent began to mumble about
14 making a right turn off of Gold Strike Drive. The CHP Officer noticed Respondent had thick
15 saliva and a dry mouth. The CHP Officer also noticed what appeared to be dry toothpaste on the
16 left side of Respondent's chin that ran down the left side of his neck. A Sacramento Metropolitan
17 Fire Medic evaluated Respondent and determined he did not suffer from diabetes, seizure, or a
18 stroke.

19 13. The CHP Officer asked Respondent to step out of his vehicle. He was very unsteady
20 and he fell back against his seat and leaned on it for balance. The CHP Officer then asked
21 Respondent a series of pre-Field Sobriety Test questions. Respondent said he was an eye surgeon
22 and he was on his way to the hospital to perform an emergency eye surgery. Respondent stated he
23 took heart medication, but he did not drink or take any illicit medication. When the CHP Officer
24 told Respondent he noticed signs of drug impairment, Respondent said he suspected his 13-year-
25 old daughter had placed something in his juice. He said his daughter had put something in his
26 drink on two prior occasions. Respondent stated he had felt strange starting at 10:00 AM that
27 morning and that he did not know what his daughter had put in his drink. Respondent then failed
28 a series of Field Sobriety Tests.

14. The CHP Officer arrested Respondent next to his vehicle. Respondent consented to a blood test. Due to Respondent's high heart rate and altered state, the Sacramento Metropolitan Fire Medic took Respondent to the hospital. At 1:58 PM, the CHP Officer observed the phlebotomist obtain two vials of Respondent's blood out of his left arm in a medically approved manner. The CHP Officer then immediately took custody of the blood. Afterwards, another CHP Officer transported Respondent to the Sacramento County Jail. Respondent's blood sample was placed in the Sacramento County blood evidence locker. During the intake process, the intake Deputy discovered 5 pills in Respondent's right shoe. The pills were booked into the East Sacramento CHP evidence locker. At 5:55 PM, Respondent was booked into the Sacramento County Jail for DUI causing injury.

15. On or about November 19, 2019, Respondent's toxicology report showed levels of diazepam,¹ nordiazepam,² carisoprodol,³ meprobamate,⁴ and zolpidem.⁵ Respondent was not prescribed any of these controlled medications. In his investigative interview, Respondent refused to explain whether he was prescribed diazepam, nordiazepam, carisoprodol, meprobamate, and zolpidem and where he obtained them.

16. On or about December 16, 2019, a criminal complaint was filed against Respondent in the matter entitled *The People of the State of California v. James B Martel* in Sacramento

¹ Diazepam (Valium), is a Schedule IV controlled substance as defined by section 11057(d) of the Health and Safety Code and section 1308.14(c) of Title 21 of the Code of Federal Regulations, and is a dangerous drug as defined in Code section 4022. It is a benzodiazepine medication used to treat anxiety and muscle spasms. Diazepam can produce psychological and physical dependence.

² Nordiazepam is a metabolite of diazepam. It is a Schedule IV controlled substance as defined by section 11057(d) of the Health and Safety Code and section 1308.14(c) of Title 21 of the Code of Federal Regulations, and is a dangerous drug as defined in Code section 4022.

³ Carisoprodol (Soma), is a Schedule IV controlled substance as defined by section 1308.14(c) of Title 21 of the Code of Federal Regulations, and a dangerous drug pursuant to Business and Professions Code section 4022. It is a muscle relaxant medication used to treat short-term muscle pain. Carisoprodol can cause drowsiness.

⁴ Meprobamate is a metabolite of carisoprodol. It is a Schedule IV controlled substance as defined by section 11057(d) of the Health and Safety Code and section 1308.14(c) of Title 21 of the Code of Federal Regulations and is a dangerous drug as defined in Code section 4022.

⁵ Zolpidem (Ambien) is a Schedule IV controlled substance as defined by section 11057(d) of the Health and Safety Code and section 1308.14(c) of Title 21 of the Code of Federal Regulations and is a dangerous drug as defined in Code section 4022. It is used short-term to treat insomnia. Zolpidem can cause drowsiness.

1 County Superior Court, Case Number 19MI022348. Count one of the criminal complaint charged
2 Respondent with a misdemeanor violation of Vehicle Code section 23153, subdivision (f).

3 17. On or about July 27, 2022, Respondent pled no contest to and was convicted of
4 violating Vehicle Code section 23153, subdivision (f) in Sacramento Superior Court. He was
5 ordered to complete a three-month first-offender program and to pay fines and restitution. He was
6 sentenced to serve 50 days in County Jail, with 30-days suspended on the condition that he
7 complete a year of therapy sessions to include no fewer than 30 sessions.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Conviction of a Crime Substantially Related to the Qualifications, Functions, or Duties of a**
10 **Physician and Surgeon)**

11 18. Respondent James Benjamin Martel, M.D. is subject to disciplinary action under
12 sections 2227 and 2234, as defined by section 2236, of the Code, and California Code of
13 Regulations, Title 16, section 1360, in that he was convicted of a crime substantially related to the
14 qualifications, functions, or duties of a physician or surgeon. The circumstances are set forth in
15 paragraphs 12 through 17, above, and are incorporated here by reference as if fully set forth
16 herein.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Excessive Use of Drugs or Alcohol)**

19 19. Respondent James Benjamin Martel, M.D. is subject to disciplinary action under
20 sections 2227 and 2234, as defined by section 2239, subdivision (a), of the Code, and California
21 Code of Regulations, Title 16, section 1360, in that he has used controlled substances to the
22 extent, or in such a manner, as to be dangerous or injurious to himself, or to any other person or to
23 the public, as more particularly alleged in paragraphs 12 through 17, above, which are hereby
24 incorporated by reference and realleged as if fully set forth herein.

25 **THIRD CAUSE FOR DISCIPLINE**

26 **(Administering Controlled Substances to Himself)**

27 20. Respondent James Benjamin Martel, M.D. is subject to disciplinary action under
28 section 2238, which establishes that it is unprofessional conduct for a physician to violate state

1 law regulating dangerous drugs or controlled substances. Respondent committed unprofessional
2 conduct in violation of section 2238 in that he violated Health & Safety Code section 11170, by
3 furnishing and administering a controlled substance to himself. The circumstances are set forth in
4 Paragraphs 12 through 17, above, which are hereby incorporated by reference and realleged as if
5 fully set forth herein.

6 **FOURTH CAUSE FOR DISCIPLINE**

7 **(General Unprofessional Conduct)**

8 21. Respondent James Benjamin Martel, M.D. is subject to disciplinary action under
9 sections 2227 and 2234, as defined by section 2234, of the Code, in that he has engaged in
10 conduct which breaches the rules or ethical code of the medical profession, or conduct which is
11 unbecoming a member in good standing of the medical profession, and which demonstrates an
12 unfitness to practice medicine, as more particularly alleged in paragraphs 12 through 17, above,
13 which are hereby realleged and incorporated by reference as if fully set forth herein.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 60544, issued to James Benjamin Martel, M.D.;
2. Revoking, suspending or denying approval of James Benjamin Martel, M.D.'s authority to supervise physician assistants and advanced practice nurses;
3. Ordering James Benjamin Martel, M.D., to pay the Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;
4. Ordering Respondent James Benjamin Martel, M.D., if placed on probation, to provide patient notification in accordance with Business and Professions Code section 2228.1; and
5. Taking such other and further action as deemed necessary and proper.

DATED: **JAN 06 2023**


REJI VARGHESE
Deputy Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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